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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,953	12/14/2001	Roger Kaiser	10660-046US (10756P6)	7145

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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,953

Applicant(s)

KAISER ET AL.

Examiner

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. This action is responsive to the amendment filed on September 16, 2002.
2. The rejection of claims 4-5 under 35 U.S.C. 112, second paragraph is withdrawn in view of applicants' amendment.
3. Claims 1-8 stand rejected under 35 U.S.C. 102(b) as being anticipated by Harmer et al. (EP 0,116,422), hereinafter "Harmer" for the reasons set forth in the office action in paper number 3.
4. The rejection of claims 1-3 and 8 under 35 U.S.C. 102(b) as being anticipated by Cook et al. (EP 0,175,485) is withdrawn in view of applicants' arguments.
5. The rejection of claims 1-3 and 6-8 under 35 U.S.C. 102(b) as being anticipated by GB 1,247,189, hereinafter "GB '189" is withdrawn in view of applicants' arguments.
6. The rejection of claims 1-8 under 35 U.S.C. 102(a) as being anticipated by Jeschke et al. (WO 99/47635) is withdrawn in view of applicants' submission of a certified translation of their foreign priority document.

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Response to Applicants' Arguments

7. Applicants' arguments filed on September 16, 2002 have been fully considered but they are not persuasive.

With respect to the rejection based upon Harmer, Applicants argue that Harmer does not involve producing at least two preliminary mixtures and maintaining them separately until they are mixed immediately prior to or upon filling the composition into containers. Applicants also argue that Harmer, at page 8, lines 22-28, suggests that the components may be mixed at any time prior to filling into bottles provided that stirring is continued and also argues that on page 3, line 26 to page 4, line 3, Harmer further teaches avoiding the problem of having to fill each container separately with predetermined amounts of two different concentrates, as opposed to the present specification in Examples 1 and 2, in which one layer is filled into the bottle on top of the other layer.

The Examiner respectfully disagrees with the above arguments because of the following reasons. On page 8, lines 22-28, Harmer teaches in Example 1, that *the composition was prepared by mixing thoroughly together with stirring all the components with the exception of coconut diethanolamide, ethoxylated cocomonoethanolamide and perfume which were preblended prior to addition to the rest of the components . . . The composition was filled directly into bottles...* The said components (which are: 40% aqueous solution of triethanolamine lauryl sulphate; 40% aqueous solution of ethoxylated cocomonoethanolamide sulphate triethanolamine salt, sodium hexametaphosphate and water, which were mixed thoroughly together, are equivalent to one

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preliminary mixture, and the preblend of the coconut diethanolamide, ethoxylated cocomonoethanolamide and perfume, which were added separately, is equivalent to the other preliminary mixture. On page 1, lines 5-6, Harmer also teaches that on standing, the composition separate out into distinct layers, that is an upper aqueous layer and a lower aqueous layer (see abstract). With regards to filling the container separately with the preliminary mixtures, there is nowhere required in the present claims wherein the packaging container is first filled with the first preliminary mixture followed by the second preliminary mixture. Hence, Harmer teaches each of the limitations of the present claims. Even assuming this limitation were present in the claim, the teachings of Harmer on page 3, line 26 to page 4, line 3, regarding "avoiding the problem of having to fill each container separately with predetermined amounts of two different concentrates" is still a teaching - negative teaching. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. V. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. Denied*, 469 U.S. 851 (1984), see MPEP 2141.02, MPEP 2145X.D.1.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

(703) 872-9311 - for Official After Final faxes
(703) 872-9310- for all other Official faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.

November 27, 2002

Lorna M. Douyon
Lorna M. Douyon
Primary Examiner
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